

Second Supplement to Memorandum 86-54

Subject: Study L-1040 - Estate and Trust Code (Public Guardians and Public Administrators--comments on draft)

Attached to this memorandum is a letter from Harry P. Drabkin, Deputy County Counsel for Stanislaus County (Exhibit 1), supplementing his comments set out in the First Supplement to Memorandum 86-54.

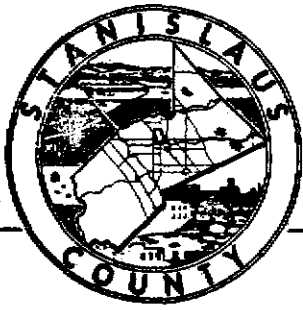
Mr. Drabkin is concerned with Section 2907 (advance on expenses of public guardian). Mr. Drabkin notes that existing law allows the County to advance the public administrator funds necessary for administration of the estate, and requires the advancement to be reimbursed by the estate. Mr. Drabkin points out, however, that in some cases the estate is not sufficient to reimburse the county and in this situation the statute should make clear that reimbursement is excused and the public administrator is not personally liable.

This result could be accomplished by revising the draft of Section 2907 to provide that, "the county shall be reimbursed therefore ~~out-of~~ any to the extent funds or property of the estate ~~by-the-public administrator~~ are sufficient".

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

EXHIBIT 1

**STANISLAUS COUNTY****County Counsel****MICHAEL H. KRAUSNICK**
County CounselPOST OFFICE BOX 74
MODESTO, CA 95353
PHONE (209) 571-6376
ATSS 482-6376

July 29, 1986

Mr. Nathaniel Sterling
Assistant Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Dear Mr. Sterling:

IN RE: REVISION OF PUBLIC GUARDIAN AND PUBLIC ADMINISTRATOR
STATUTES

Thank you for sending me the First Supplement to Memorandum 86-54. In commenting on the proposed Section 2907, I believe you misunderstood my letter. This Section keeps the present statute that allows the County to provide a revolving fund for the public guardian to use when an estate handled by the public guardian does not have cash necessary for immediate expenses. An example would be when the public guardian is appointed as conservator of an estate where there is only real property and it is necessary to pay and keep up water, garbage, sewer, electricity, gas, or other utilities. It may also be necessary to prevent default of a note and deed of trust, or mortgage. These are County funds that the County makes available to the public guardian to use in protecting these estates. In such cases once the protected property is sold, there are sufficient assets to repay this advancement of County funds.

It is necessary that the public guardian have such a revolving fund. A good example is a case that involved the public administrator of this County. He was appointed as successor administrator in an estate which consisted of real property and approximately 30 Arabian horses. The removed executrix advised us that there was no cash in the estate and that there was no feed for the horses. It was necessary immediately to use the revolving fund to purchase feed for these horses. This, of course, was reimbursed by this estate, although it turned out to be an insolvent estate.

There can be cases, however, where there appears to be sufficient property to repay the advancement of these funds, but in fact the property that appeared to be available was not

available. In one case, the conservatorship estate consisted of a parcel of real property. The public guardian incurred a debt with the local newspaper in publishing the notice of sale. After the notice was published, the conservatee died, terminating the authority of the public guardian as conservator to sell the property. There was no money to pay the newspaper, nor to pay the inheritance tax referee for his appraisal. Ordinarily, it would be expected that the property would be probated. However it turned out that there was a hospital lien on the property which was secured by a note and deed of trust. The beneficiary foreclosed on that note and therefore there was no property whatsoever to pay the debt that the public guardian had incurred.

The public guardian usually receives cases on an emergency basis where there is little opportunity to know the actual assets of the estate. It is also often necessary to make immediate payments to preserve the apparent estate. It may well be that advancements are made to preserve apparent assets of the estate that in the end are not available to reimburse those advancements because they do not in fact belong to the estate.

In no way should the public guardian or public administrator be personally liable for these advancements. I believe that these should be considered debts of the County, since the public guardian or administrator is performing a public function. Where ultimately they cannot be repaid, that should be considered a proper County charge to be borne by the County.

Thank you very much.

MICHAEL H. KRAUSNICK, County Counsel

By *Harry P. Drabkin*
Harry P. Drabkin, Deputy

HPD/sjp
cc: Public Administrator
Public Guardian